

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CONNECTU LLC,

Plaintiff,

v.

MARK ZUCKERBERG, EDUARDO SAVERIN,
DUSTIN MOSKOVITZ, ANDREW MCCOLLUM,
CHRISTOPHER HUGHES, and THEFACEBOOK,
INC.,

Defendants.

MARK ZUCKERBERG and
THEFACEBOOK, INC.,

Counterclaimants,

v.

CONNECTU LLC,

Counterdefendant,

and

CAMERON WINKLEVOSS, TYLER
WINKLEVOSS, and DIVYA NARENDRA,

Additional Counterdefendants.

CIVIL ACTION NO. 1:04-cv-11923
(DPW)

**JOINT MOTION TO MODIFY SCHEDULING ORDER
PURSUANT TO FED. R. CIV. P. 16 AND LOCAL RULE 16.1(G)**

Pursuant to Fed. R. Civ. P. 16 and Local Rule 16.1(G), the parties hereby jointly move for an Order modifying the Court's March 29, 2005 Scheduling Order (Dkt. No. 23). The parties request that the impending dates for expert reports, close of fact and expert discovery, and summary judgment motions be postponed until the Court has the opportunity to rule on the parties' motions currently pending before the Court. This will allow the Court to address a pending motion to dismiss, as well as permit the parties adequate time to complete discovery

(including preparation of expert reports) after all other motions are resolved. The parties agree that in light of the pending motion to dismiss and discovery motions, all deadlines currently set by the March 29, 2005 Scheduling Order should be vacated.

I. Request for Expedited Consideration

In view of the impending November 1, 2005 deadline for expert reports, the parties request that this motion be considered on an expedited basis. The parties are available for a telephone conference to discuss this motion, at the Court's convenience.

II. Reasons for Request

Although the parties have exchanged document requests and interrogatories, produced documents, and responded to interrogatories, the parties have filed several motions which may critically impact all further discovery, particularly the current November 1, 2005 deadline for the parties to disclose experts and serve expert reports on those issues for which they bear the burden of proof.

The parties currently have the following seven motions pending before the Court:

1. Plaintiff's Motion to Compel the Production of Mirror Images of Defendants' Hard Drives and Other Electronic Memory Devices and Documents Created After May 21, 2004, filed July 28, 2005 (Dkt. 37);
2. Defendants' Cross-Motion for a Protective Order, filed August 18, 2005 (Dkt. 43);¹
3. Plaintiff's Motion to Compel Answers to Interrogatory Nos. 6, 9-14, 16, and 18, filed August 30, 2005 (Dkt. 52);
4. The Facebook Defendants' Motion to Compel Particularized Identification of Trade Secrets in Response to the Facebook Defendants' Interrogatory No. 2, filed September 8, 2005 (Dkt. 63);

¹ The Cross-Motion was originally filed by The Facebook Defendants, but Defendant Saverin later filed a notice to join in the motion (Dkt. 59).

5. Plaintiff's Motion to Compel the Production of Documents in Response to Production Request Nos. 42, 44-46, 70-71, 85-96, 98-105, 107-110, 113, and 169, filed September 9, 2005 (Dkt. 68);
6. Defendants' Joint Motion to Compel Testimony from ConnectU Responsive to Defendants' Amended 30(b)(6) Notice, filed October 4, 2005 (Dkt. 90); and
7. Defendants' Motion to Dismiss, filed October 14, 2005 (Dkt. 94).

The first six motions have been fully briefed and are ready for disposition. Briefing on the seventh motion (motion to dismiss) will be completed in approximately 2-3 weeks.

The current discovery deadlines, set forth in the March 29, 2005 Scheduling Order, are as follows:

1. expert reports for party bearing the burden of proof due on or before November 1, 2005, rebuttal reports due on or before December 1, 2005;
2. close of fact and expert discovery on December 15, 2005;
3. motions for summary judgment filed by January 27, 2006;
4. submission of status report: February 16, 2006;
5. scheduling/status conference: February 23, 2006.

These dates are rapidly approaching. The parties do not believe that they can adequately complete their expert reports by the November 1, 2005 deadline, without resolution of the discovery issues raised in the pending motions. Moreover, Defendants have filed a motion to dismiss (motion no. 7 identified above), which the parties agree should also be resolved by the Court before additional deadlines are fixed.

III. Summary of Discovery that Remains to be Taken

The following discovery remains to be taken:

1. Depositions: There has currently been one deposition in this case. Plaintiff has noticed five depositions of the individual Defendants. Defendants have noticed four depositions

of third parties and wish to take additional testimony of Plaintiff ConnectU (motion no. 6 above). Plaintiff also plans to take third party and Rule 30(b)(6) depositions and Defendants plan to take party depositions. Plaintiff and Defendants plan to take expert depositions after expert reports are exchanged. The parties agree that depositions, including the noticed depositions, should not be taken until the motions are resolved because information and documents sought by the pending motions are needed to prepare for, and/or defend, such depositions, and to prepare expert reports. In addition, the number and/or scope of the depositions may be narrowed if Defendants' motion to dismiss is granted.

2. Document Production: Depending on the resolution of the pending motions to compel, significant document production remains in this case. On the other hand, grant of Defendants' motion to dismiss could narrow document discovery. The parties will also soon meet and confer regarding Defendants' responses and objections to Plaintiff's second set of production requests, with respect to which Plaintiff expects to seek additional documents and things from Defendants. Plaintiff also expects to seek from Defendants additional documents and things covered by its production requests. The parties need such documents and things to prepare their expert reports.

3. Interrogatories and Requests for Admission: The parties will soon meet and confer regarding Defendants' responses and objections to Plaintiff's second set of interrogatories, with respect to which Plaintiff expects to seek additional information from Defendants. Plaintiff also expects to seek from Defendants additional information covered by its interrogatories. The parties need such information to prepare their expert reports; however, the needed information may narrow if Defendants' motion to dismiss is granted.

The parties also expect to serve requests for admissions.

IV. Proposed Modification of Scheduling Order

To allow the parties sufficient time to complete discovery after the pending motions are decided, and so that the preparation of expert reports will not be hindered by uncompleted fact discovery, the parties propose that the current discovery dates be vacated. The parties suggest that the Court vacate paragraphs (2) through (4) and (6) of the March 29, 2005 Scheduling Order and set new deadlines after the pending motions are resolved, preferably in connection with a status conference.

V. Conclusion

For the reasons set forth above, the parties respectfully urge the Court to grant this motion.

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